

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1604

Introduced by Assembly Member Campos

February 7, 2012

An act to add Section 632.2 to the Penal Code, relating to wiretapping.

LEGISLATIVE COUNSEL'S DIGEST

AB 1604, as amended, Campos. Invasion of privacy: computer crimes.

Existing law makes it a misdemeanor to, by means of any machine, instrument, or contrivance, or in any other manner, intentionally tap, or make an unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with a telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of an internal telephonic communication system, or to willfully and without the consent of all parties to the communication, or in any unauthorized manner, read or attempt to read, or to learn the contents or meaning of a message, report, or communication while the same is in transit or passing over a wire, line, or cable, or is being sent from, or received at any place within this state. Existing law also makes it a misdemeanor to intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio.

This bill would authorize a person to intercept the wire or electronic transmissions of a computer trespasser, as defined, ~~if specified~~

~~conditions are met, including authorization transmitted to, through, or from the computer system if authorized by the owner or operator of the computer system and being engaged in an investigation for the sole purpose of recovering the computer system. The bill would also authorize law enforcement officers to use information gathered from those transmissions for the sole purpose of recovering the computer system.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 632.2 is added to the Penal Code, to read:
2 632.2. (a) ~~Notwithstanding other provisions of law, a~~ *It shall*
3 ~~not be unlawful under this chapter for a person may to intercept~~
4 ~~the wire or electronic transmissions of a computer trespasser if all~~
5 ~~of the following conditions are met: transmitted to, through, or~~
6 ~~from a computer system if the owner of the computer system~~
7 ~~authorizes the interception of the computer trespasser's~~
8 ~~communications for the sole purpose of recovering the computer~~
9 ~~system.~~
10 (1) ~~The communications are transmitted from, to, or through a~~
11 ~~computer system.~~
12 (2) ~~The owner or operator of the computer system authorizes~~
13 ~~the interception of the communication.~~
14 (3) ~~The person is engaged in an investigation.~~
15 (4) ~~The person has reason to believe that the information~~
16 ~~intercepted will be relevant to the investigation.~~
17 (5) ~~The interception does not acquire information other than~~
18 ~~that transmitted to, from, or through the computer system by the~~
19 ~~computer trespasser.~~
20 (b) ~~For purposes of this section, the following definitions shall~~
21 ~~apply:~~
22 (b) *It shall not be unlawful under this chapter for a law*
23 *enforcement officer to use information gathered pursuant to*
24 *subdivision (a) for the sole purpose of recovering a computer*
25 *system.*
26 (c) *“Computer system” shall have the same meaning as in*
27 *paragraph (5) of subdivision (b) of Section 502.*
28 (1)

1 (d) “Computer trespasser” means a person who *unlawfully*
2 *possesses or* accesses a computer system without the authorization
3 ~~of the person who owns or has legal possession of the computer~~
4 ~~system. A person known by the owner of the computer system to~~
5 ~~have an existing contractual relationship with the owner or~~
6 ~~operator of the computer system for access to all or part of the~~
7 ~~computer system while acting within the scope of the contractual~~
8 ~~relationship is not a computer trespasser. A computer trespasser~~
9 has no reasonable expectation of privacy in communications made
10 to, from, or through the computer system. ~~A person known by the~~
11 ~~owner or operator of the computer system to have an existing~~
12 ~~contractual relationship with the owner or operator of the computer~~
13 ~~system for access to all or part of the computer system shall not~~
14 ~~be considered a computer trespasser.~~

15 (2) ~~“Computer system” shall have the same meaning as in~~
16 ~~paragraph (5) of subdivision (b) of Section 502.~~